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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television
Consumer Protection and Competition Act
of 1992

Rate Regulation

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PETITION FOR RECONSIDERATION BY
MULTICHANNEL COMMUNICATION SCIENCES, INC.

1 Introduction

Multichannel Communication Sciences, Inc. ("MCSI") pursuant to Commission Rules 1.429 and 1.4(b)(1), 47 C.F.R. §§ 1.429 and 1.4(b)(1), hereby petition the Commission for reconsideration of a portion of its decisions contained in the Report and Order and Further Notice of Proposed Rulemaking¹ in the above-captioned proceeding ("Report and Order"). Following several pleadings on the subject of the instant petition in this proceeding² and in a copending Commission proceeding³ dealing with Section 17 of the 1992 Cable Act⁴ ("Cable

¹ *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 - Rate Regulation, Report and Order and Further Notice of Proposed Rulemaking, MM Docket 92-266, FCC 93-177, Released May 3, 1993.*

² Comments of MCSI, *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation*, MM Docket No. 92-266, January 27, 1993. See also MCSI's ex parte presentation entitled *MCSI's Broadband Descrambling and Proposed Regulatory Benchmark Increments for Voluntary Offering of Simultaneously Clear Addressable Video Programming Services*, MM Docket No. 92-266, March 3, 1993.

³ Comments of MCSI dated March 22, 1993 and Reply Comments of MCSI dated April 21, 1993 both *In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, Compatibility Between Cable Systems and Consumer Electronics Equipment*. ET Docket No. 93-7.

⁴ Pub. L. No. 102-385, 102 Stat. 1460 (1992).

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Act") , MCSI seeks reconsideration of that part of the Report and Order setting the benchmarks to govern Cable Programming Service rates and urges the Commission to adopt an additional benchmark increment for Cable Programming Service tiers provided to subscribers as

Antenna Television Association¹⁰ and TeleCable Corp.¹¹

Evidence for even further pressures to move to full addressability much sooner than the statutory schedule of the Tier Buy Through prohibition provisions is now widely available as cable operators have been reported to seek a la carte distribution arrangements with cable satellite programmers¹². Moreover, additional new networks and programming channels such as Encore 5 multiplex, Fox Network, ESPN 2 etc. are all scheduled to be launched soon. There is no question that such a la carte channel carriage arrangements and the operator's response to the various provisions of the Cable Act require flexible channel by channel control that can only come through the adoption of full addressability.

3 The Current Commission's Rate Rules Will Have Unintended Negative Impact on Subscriber Equipment Costs and Compatibility.

The Competitive Benchmark established by the Commission to regulate cable rates for programming and equipment charges has been obtained by the Commission through an econometric multiple regression estimation of rate charged by a sample of cable systems. Then, an auxiliary "effective competition" variable was set to obtain an "effectively competitive" benchmark.¹³ Such rate benchmark reflects a kind of an average rate that would be charged by systems *under effective competition*. Although not directly obtained from cost of service figures, the rates obtained for systems under effective competition must be presumed to be based on actual costs. Because sample population variances are nearly equally situated below and above the regression benchmark, half of all competitive systems (that charge rates substantially based on their costs) would still be required to reduce their rates to the benchmark. This problem is further aggravated by a shift in operator's equipment cost structure away from the prevailing conditions at the time the Commission's survey establishing the benchmark was

⁹ NCTA Compatibility Comments at 12-19.

¹⁰ CATA Compatibility Comments at 16-17.

¹¹ TeleCable Compatibility Comments at 7-9.

¹² See "Ops Twist Nets' Arms for a la Carte", Multichannel News, June 7, 1993, p1. See also "'Dog Eat Dog' Operators push for a la carte pricing", Cable World, June 7, 1993, p189. See also "Battle Shaping Up Over Channel Pricing", Cable World, June 14, 1993, p1.

¹³ Report and Order, Appendix E "Survey Results: Technical Issues."

conducted. Based on Paul Kagan's addressability data, some 25 million addressable subscribers out of a total of 58 million cable subscribers (43 %) were served by cable systems at the time the benchmark survey was conducted. As pointed out above, a substantial increase in addressable penetration must be expected. This means that subscriber equipment capital costs per subscriber will increase as compared to the present levels. Consequently, the fraction of operators who charge rates (presumably based on costs) that exceed the benchmarks will rise to more than half. Clearly, despite adjustments for inflation and channel capacities, the competitive benchmark so constructed will be confiscatory for the majority of cable operators, who will have no choice but take the Cost Of Service Showing route¹⁴.

In a Cost Of Service Showing, operators recover all their customer equipment costs including a 11.2% profit and a 1.0% administrative expense.

4.2 Applicability

As explained in MCSI's previous pleadings, SCATS may be provided by Broadband Descrambling, Interdiction or a set of addressable traps. Mere offering of clear channels in a tier would not qualify for SCATS unless access to the channels can be addressably controlled and the tier in question is not required to be purchased in order to receive any other tiers or premium channels. A Basic service cannot qualify for SCATS.

4.3 SCATS Benchmark Increment

The Commission shall establish a national monthly SCATS benchmark increment per channel given by S cents per channel per subscriber. If a Cable Programming Service tier i with Ch_i channels qualifies as SCATS, the SCATS increment for such tier is given by $d_i = Ch_i \times S$. The total SCATS increment modifying the summed benchmark across all SCATS tiers is given by

$$\Delta P = S \sum_i Ch_i$$

The value of S established by the commission might reflect a portion of the incremental cost saving per subscriber over costs associated with full addressable deployment of set-top descramblers with associated remote controls and installation charges and therefore may be a function of the national set-top descrambler penetration figures. It should also reflect the increased value and utility to the subscriber of restoring all the features of his consumer electronics equipment.

4.4 Modification of SCATS benchmark increment for Cable Programming Services

The national SCATS increment S should be set in 1993 and allowed to increase over time by yearly updates based on relevant cost indices the Commission selects such as CPI or PPI etc. When sufficient data is available from systems offering SCATS in the face of "effective competition" (hence unregulated and freely setting market rates for such SCATS offering), S for regulated systems may be set or modified by the FCC according to such methods as the FCC establishes for factoring such information in setting other benchmarks for cable programming services.

5 The Benefit of SCATS to Subscribers

A typical example of addressability roll-out is supplied in MCSI's Reply Comments in the Compatibility proceeding.¹⁵ It is shown that by combining the addressable denial and descrambling features of Broadband Descrambling, nearly half as many broadband subscriber units will be required as compared to the use of set-top descramblers. Hence, absent SCATS incentives and the likely Cost of Service Showing route, cable operator's only option will be to continue to supply subscribers with more set-top descramblers at costs to subscribers that far


7 CONCLUSION

In conclusion, MCSI petition the Commission to establish a separate category of Cable Programming Services provided as Simultaneously Clear Addressable Tiered Services and urges the adoption by the Commission of an incremental rate benchmark for that service category in order to serve the public interest and comply with the Cable Act of 1992 as detailed and explained in this Petition.

Respectfully submitted,

MULTICHANNEL COMMUNICATION
SCIENCES, INC.

By:


Ron D. Katznelson, Ph.D.
President

5910 Pacific Center Blvd.
San Diego CA. 92121, (619) 587-6777

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